

IN SENATE OF THE UNITED STATES.

FEBRUARY 17, 1846.

Submitted, and ordered to be printed.

Mr. BREESE made the following

REPORT :

[To accompany bill S. No. 87.]

The Committee on Public Lands, to whom were referred the petition and accompanying papers of George Gordon, of Randolph county, State of Illinois, have had the same under consideration, and ask leave to report :

That it appears from the papers referred, that George Gordon, on the 29th of November, 1836, entered and purchased at the land office at St. Louis, Missouri, as per receiver's certificate No. 8,367, the southwest quarter of section No. 32, in township No. 46, of range No. 6 east; and on the same day Zachariah C. Poor entered and purchased, at the same land office, as per receiver's certificate No. 8,366, the southeast quarter of section No. 31, the same township and range, which, on the first day of December following, he assigned to said Gordon.

These entries were adjudged illegal by the Commissioner of the General Land Office in 1838, for the reason that they were of fractions made by a private claim, confirmed by Congress in 1834, and were reserved to satisfy it, and that they had no legal existence until, after the private claim being satisfied, they returned to the mass of public lands.

In May, 1837, Gordon sold by deed, with covenant of warranty, these tracts to Samuel Hawken and John Walsh; and when his entry was cancelled they entered one of the tracts, the southeast of 31, and one James T. Walton the other, being the southwest of 32. These subsequent entries were also cancelled at the General Land Office for other irregularities, and no objection now exists to confirming the first entries by Gordon and Poor, as will be seen by reference to the accompanying letters from the General Land Office; and for this purpose the committee report a bill.

GENERAL LAND OFFICE, March 5, 1844.

SIR: I have the honor to return herewith the letter of the Hon. Sidney Breese, with its enclosures, and, in reply to the questions endorsed thereon by you, have to state that there is no authority in this office to set aside

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the last entries of the land referred to, unless erroneously made ; and that although it is not the practice of this office to review its decisions, without the presentation of new facts, yet cases might occur in which I should not deem it improper to take such a course, at any time prior to the issuing of the patent.

In the cases of Messrs. Gordon and Poor, the land was reserved at the date of the law under which they claim, and, by the plain terms of that law, was not subject to sale. The *subsequent* removal of that reservation, by the confirmation by Congress of the private claim, and the establishment of the lines thereof, did not alter the facts existing at the date of the law, nor confer on this office a power under that law, which did not exist at the date of it.

In further reply to your question, as to the authority of this office to set aside the entries last made, I would observe, that as the act of 1838, revived by that of 1st June, 1840, allowed the entry of fractions made by confirmed private claims in the Palmyra district *alone*, it would appear that the entry of the southeast *fractional* quarter of section 31, township 46 north, range 6 east, by Samuel Hawken and John Walsh, under act of the 1st June, 1840, is unauthorized by that act. Also, as the act of 26th August, 1842, directs "that the law of 4th September, 1841, shall be so construed as not to confer on any one a right of pre-emption, by reason of a settlement made on a tract heretofore sold under a prior pre-emption law, or at private entry, where such prior pre-emption or entry has not been confirmed by the General Land Office on account of any alleged defect therein, and where such tract has passed into the hands of an innocent and bona fide purchaser," the entry of the southwest fractional quarter of section 32, township 46 north, range 6 east, made by James T. Walton, under said act of 4th September, 1841, is of no validity, if, as alleged by Mr. Gordon, he has sold the land under the pre-emption entry previously made by him, and such sale was prior to the 26th August, 1842.

The rejection of either or both these last entries, when reached in their regular order, will not, however, it is scarcely necessary to say, impart any validity to the entries of Gordon and Poor ; but it may furnish good reasons, under all the circumstances of the case, for some special law for the confirmation of their entries.

With much respect, your obedient servant,

THOS. H. BLAKE,
Commissioner.

Hon. J. C. SPENCER,
Secretary of the Treasury.

GENERAL LAND OFFICE, *February 14, 1846.*

SIR : In reply to your letter of the 12th inst., as chairman of the Committee on Public Lands, I have to state that the entry of the southeast fractional quarter 31, township 46 north, range 6 east, under the act of 1st June, 1840, in the names of Samuel Hawken and John Walsh, and that of the southwest fractional quarter 32, township 46 north, range 6 east, in the name of James T. Walton, under the act of 4th September, 1841, are regarded by this office as invalid, for the reasons given in letter of this office to the Secretary of the Treasury of the 5th March, 1844, to which reference is made by you.

No objection is seen to the confirmation of the entries originally made by George Gordon and Zachariah Poor; indeed, as it is shown that the subsequent claimants, Hawken and Walsh, merely made their entry to secure the interest acquired by their purchase of the previous entry of Poor, through his assignee, George Gordon, the propriety of a confirmation of the original entry of Poor would seem to be the best mode of settling all the questions which have arisen between the parties; the one selling and the other purchasing what was deemed a valid claim to the land in question.

With much respect, your obedient servant,

JAS. SHIELDS,
Commissioner.

Hon. S. BREESE,

Chairman of Committee on Public Lands, Senate U. S.

